DOCKET NO. CV 01-0505662-S

RICHARD BLUMENTHAL, ATTORNEY GENERAL OF THE STATE OF CONNECTICUT, Plaintiff/Appellant,	:	SUPERIOR COURT JUDICIAL DISTRICT OF NEW BRITAIN
V.	:	
CONSOLIDATED EDISON, INC., NORTHEAST UTILITIES, CONNECTICUT DEPARTMENT OF PUBLIC UTILITY CONTROL, THE OFFICE OF THE CONSUMER COUNSEL AND THE PROSECUTORIAL UNIT OF THE DEPARTMENT OF PUBLIC UTILITY CONTROL, Defendants/Appellees.	:	FEBRUARY 13, 2001

MEMORANDUM OF LAW IN SUPPORT OF THE APPELLANT'S APPLICATION FOR STAY

The appellant, Richard Blumenthal, Attorney General of the State of Connecticut, in accordance with Conn. Gen. Stat. § 4-183(f), hereby requests that the court order a stay of the final decision of the appellee Department of Public Utility Control ("Department" or "DPUC") dated October 19, 2000 ("Final Decision") in its Docket No. 00-01-11, Application of Consolidated Edison, Inc., and Northeast Utilities for a Change of Control, attached as Exhibit A, and modified upon reconsideration on November 22, 2000, attached as Exhibit B, in order to preserve the status quo pending a decision in this appeal. A balancing of the equities in this case demonstrates the need for the entry of a stay in order to preserve the status quo pending the final outcome of this appeal. The appellant will likely prevail in his appeal, the people of the State of Connecticut and the State of Connecticut will be irreparably harmed if the companies

consummate their merger prior to a decision in this appeal and the granting of a stay will not unfairly prejudice other parties in this matter and will protect the interests of the public.

I. BACKGROUND

This case involves an appeal of a final decision of an administrative agency brought pursuant to sections 4-183 and 16-35 of the Connecticut General Statutes. The Attorney General appeals from a final decision by the Department to approve, subject to 58 conditions, the merger between Consolidated Edison, Inc. ("CEI") and Northeast Utilities ("NU"). NU is a holding company for two Connecticut public service companies, Connecticut Light and Power ("CL&P") and Yankee Gas ("Yankee").

In its Final Decision, the Department approved an earnings sharing mechanism which allowed CL&P to retain all earnings up to 11.3% return on equity ("ROE") (100 basis points above its currently allowed ROE of 10.3%), required it to share 50% of earnings above that level with its customers and fixed CL&P's distribution rates at current levels reduced by 3% through at least 2003. The Department also approved the proposed merger despite finding serious shortcomings regarding CEI's managerial suitability to exercise control over CL&P and Yankee.

The Department's approval of the earning sharing mechanism plainly violates Connecticut law regarding rate making, is arbitrary and capricious and is beyond the Department's legal authority. Also, the Department erred in approving the merger despite CEI's managerial unsuitability to exercise control over Connecticut public service companies.

II. APPLICABLE LEGAL STANDARD

Conn. Gen. Stat. § 4-183(f) provides that the filing of an appeal shall not, of itself, stay enforcement of an agency decision, but that an application for a stay may be made to the court. The Connecticut Supreme Court has analogized the ruling on a motion to stay in an administrative appeal to a ruling on a temporary injunction to preserve the status quo pending a resolution of the matter on the merits. See Waterbury Teachers' Association v. Freedom of Information Commission, 230 Conn. 441, 449, 645 A.2d 978 (1994); Griffin Hospital v. Commission on Hospitals & Health Care, 196 Conn. 451, 457, 493 A.2d 229 (1985). It is within the discretion of the trial judge to terminate or to grant a stay. Griffin Hospital, 196 Conn. at 459. An application for a stay pending appeal calls for the court to exercise its general equitable powers by weighing the same equitable considerations which would be considered in the issuance of a temporary injunction. Park City Hospital v. Commission on Hospitals & Health Care, 210 Conn. 697, 700-01, 556 A.2d 602 (1989).

"The provision for 'a stay upon appropriate terms' gives the court broad authority to fashion appropriate relief to protect the interests of all those involved during the pendency of the administrative appeal." Griffin Hospital, 196 Conn. at 455.[1] There is no rigid test to apply in determining whether to issue a stay. Id. at 458. The court should balance the equities, taking

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1 [1]"While § 4-183(c) authorizes either the administrative agency or the reviewing court to grant a stay 'upon appropriate terms,' the Superior Court's exercise of its equitable powers in such instances is in fact much broader, being derived from General Statutes § 52-1. This latter provision authorizes the Superior Court to 'administer legal and equitable rights and apply legal and equitable remedies in favor of either party in one and the same civil action [including administrative appeals] so that legal and equitable rights of the parties may be enforced and protected in one action.' The Superior Court's jurisdiction to act upon an application for a stay and a restraining order, being derived from its general equitable powers as enumerated in § 52-1, did not require the court to determine whether it was dealing with an aggrieved party as a predicate to exercising jurisdiction over the stay proceedings." Park City Hospital v. Commission

into account such factors as: (1) whether it is likely the appellant will prevail; (2) whether the harm to the appellant will be irreparable; (3) whether the stay will affect other parties in the matter, and (4) whether the stay will impair the interest of the public. Id. at 456.

III. ARGUMENT

The court should stay the Department's Final Decision to approve the merger of CEI and NU and preserve the status quo pending full resolution of the issues raised in this appeal. A balancing of the equities plainly demonstrates that a stay is necessary to preserve appellant's legal right to contest the Department's Final Decision and to protect the public interest.

A. The Appellant is Likely to Prevail in His Appeal

The appellant is likely to prevail on the merits of his appeal of the Department's Final Decision. The Department's approval of the merger plainly violates Connecticut law, is arbitrary, capricious and otherwise beyond the Department's legal authority.

1. The Earning Sharing Mechanism Approved in the Department's Final Decision Violates Connecticut Law and is Arbitrary and Capricious

In its Final Decision, the Department approved an earning sharing mechanism that both permits CL&P to retain the first 100 basis points of earnings above its allowed ROE and 50% of any overearnings beyond these first 100 basis points and fixes CL&P's distribution rates through at least December 31, 2003. Final Decision, 78-79. The Department's approval of this earning sharing mechanism is affected by legal error and is arbitrary and capricious.

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on Hospitals & Health Care, 210 Conn. 697, 701, 556 A.2d 602 (1989).

a. The Earnings Sharing Mechanism Violates Conn. Gen. Stat. §16-19(g)

Conn. Gen. Stat. § 16-19(g), the interim rate decrease statute, is intended to protect ratepayers from utilities charging rates that are too high. This statute states, in relevant part, that:

> The department shall hold . . . a special public hearing . . . on the need for an interim rate decrease (1) when a public service company has, for six consecutive months, earned a return on equity which exceeds the return authorized by the department by at least one percentage point . . . or (3) if it finds that a public service company may be collecting rates that are more than just, reasonable and adequate, as determined by the department . . . . [T]he company shall be required to demonstrate to the satisfaction of the department that earning such a return on equity or collecting rates that are more than just, reasonable and adequate is directly beneficial to its customers. At the completion of the proceeding, the department may order an interim rate decrease if it finds that such return on equity or rates exceed a reasonable rate of return or are more than just, reasonable and adequate as determined by the department.

Conn. Gen. Stat. § 16-19(g) (emphasis added).

The Connecticut Supreme Court recently considered § 16-19(g) and held that the phrase 'shall hold a hearing' is mandatory. Office of the Consumer Counsel v. Department of Public Utility Control, 252 Conn. 115, 121, 742 A.2d 1257 (2000). "It is well established that [i]f ... language ... is clear and unambiguous, we will interpret it in accordance with its plain meaning absent a compelling reason to the contrary." Id., citing State v. Angell, 237 Conn. 321, 327, 677 A.2d 912 (1996). The Court contrasted those portions of § 16-19(g) where the legislature used the word 'may,' which allowed for some discretion on the part of the Department, with the use of 'shall,' which did not. Id. 121-122. The Court stated that:

> [t]he legislature's use of the word "shall" in other contexts in § 16-19(g) further bolsters our interpretation. 'The use of the word 'shall' in conjunction with the word 'may' confirms that the legislature 'acted with complete awareness of their different meanings'; Hartford Principals' & Supervisors' Assn. v. Shedd, 202 Conn. 492, 506, 522 A.2d 264 (1987); and that it intended the terms to have different meanings. Hinchliffe v. American Motors Corp., 184 Conn. 607, 613, 440 A.2d 810 (1981) (use of different terms within same sentence of statute

> 'plainly' implies different meanings intended), aff'd, 192 Conn. 252, 470 A.2d 1216 (1984); see also Plourde v. Liburdi, 207 Conn. 412, 416, 540 A.2d 1054 (1988)." Angelsea Productions, Inc. v. Commission on Human Rights & Opportunities, 236 Conn. 681, 694-95, 674 A.2d 1300 (1996).

Office of the Consumer Counsel v. Department of Public Utility Control, 252 Conn. at 122.

It is axiomatic that once a hearing is required it must be a fair hearing and cannot be perfunctory, pro forma or a sham. The outcome of the hearing must not have been predetermined. Daviau v. Planning Commission of City of Putnam, 174 Conn. 354, 358, 387 A.2d 562 (1978). A hearing is predetermined, or a "sham," if the "hearing was held merely to comply with the statutory requirements." Massimo v. Planning Commission of Town of Naugatuck, 41 Conn. Sup. 196, 201, 564 A.2d 1075 (1989). Normally, the burden would be on the plaintiff to present some evidence that the commission had made up its mind prior to the hearing. Cioffoletti v. Planning and Zoning Commission of Town of Ridgefield, 209 Conn. 544, 555, 552 A.2d 796 (1989); Massimo v. Planning Commission of Town of Naugatuck, supra, 41 Conn. Sup. at 201.

Thus, pursuant to Conn. Gen. Stat. §16-19(g), the Department must hold a meaningful hearing on the need for an interim rate decrease any time that CL&P has, for six consecutive months, earned a ROE which exceeds its allowed rate of return by 100 basis points or whenever the DPUC finds that CL&P's rates may be more than just, reasonable and adequate. The hearing must be fair, and thus its outcome cannot be predetermined. At such a hearing, CL&P "shall be required to demonstrate" that earning its ROE or collecting its rates is directly beneficial to its customers. Moreover, "[a]t the completion of the proceeding" the Department may order an interim rate decrease if it finds that CL&P's ROE exceeds a reasonable rate of return or finds that its rates are more than just, reasonable and adequate.

The earning sharing mechanism approved by the Department in its Final Decision fixes CL&P's rates through at least 2003 and permits CL&P to retain all of the first 100 basis points of any earnings in excess of its allowed ROE and to keep 50% of all earnings above that threshold during that time. This earning sharing mechanism clearly violates Connecticut law because it renders the "hearing" required by Conn. Gen. Stat. § 16-19(g) on the need for an interim rate decrease meaningless by predetermining its outcome.

In the event that CL&P earns a ROE that for six consecutive months exceeds its allowed ROE by 100 basis points through 2003 and thus triggers a special hearing on the need for an interim rate decrease pursuant to Conn. Gen. Stat. §16-19(g)(1), the DPUC's Final Decision precludes any adjustment of that ROE. This is because the earning sharing mechanism fixes rates through 2003 and expressly permits CL&P to retain a predetermined portion of those earnings in excess of its allowed ROE without even requiring CL&P to demonstrate that earning such a ROE directly benefits customers. Similarly, in the event that the Department holds a hearing pursuant to Conn. Gen. Stat. §16-19(g)(3) and determines that CL&P is collecting rates that are more than just and reasonable, the earning sharing mechanism in the Department's Final Decision expressly entitles CL&P to continue to collect such rates because it fixes CL&P's rates until at least 2003. Again, CL&P would not be required to show that collecting such rates is directly beneficial to its customers.

Thus, the earning sharing mechanism in the Department's Final Decision unlawfully deprives CL&P's ratepayers of their right to a fair hearing regarding CL&P's ROE and/or rates that is guaranteed by Conn. Gen. Stat. §16-19(g). The Department's Final Decision therefore

eliminates any opportunity for an interim rate decrease, which is an important statutory provision intended to protect ratepayers from being charged excessive rates.

b. The Earnings Sharing Mechanism is Arbitrary and Capricious and Beyond the DPUC's Legal Authority

The earning sharing mechanism is also arbitrary and capricious, in violation of Connecticut law and beyond the Department's legal authority in that the DPUC cannot lawfully fix CL&P's distribution rates in this merger proceeding. Pursuant to Connecticut law, CL&P's rates must be set in proceedings held pursuant to Conn. Gen. Stat. §16-19. Such rate proceedings necessarily involve contested hearings, investigations and findings that CL&P's rates are in conformance with the principles and guidelines of Conn. Gen. Stat. §16-19e. See e.g. Conn. Gen. Stat. §§16-19(a); 16-19a. Among these principles and guidelines is the requirement that rate be just and reasonable. Specifically, Conn. Gen. Stat. §16-19e(a)(4) provides "that the level and structure of rates be sufficient, but no more than sufficient, to allow public service companies to attract needed capital and to maintain their financial integrity, and yet provide appropriate protection to the relevant public interests, both existing and foreseeable."[2]

As the Department properly notes in its Final Decision, CL&P's customers are not expected to pay distribution rates that are more than just and reasonable during the standard offer period, which runs through 2003. Final Decision, 72. CL&P's rates were last reviewed in a § 16-19 rate proceeding in 1998-1999 at a time when CL&P was a fully integrated electric utility

2[2]Conn. Gen. Stat. § 16-19e(a)(4) embodies the "just and reasonable" test enunciated by the United States Supreme Court in Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 84 S.Ct. 281, 88 L.Ed. 333 (1944) (the Hope test). See Connecticut Light and Power Co. v. Department of Public Utility Control, 216 Conn. 627, 633-35, 583 A.2d 906 (1990).

company. See Final Decision, 71 (citing Docket No. 98-01-02, DPUC Review of the Connecticut Light and Power Company's Rates and Charges -- Phase II (February 5, 1999)).

The Department's review of the merger of CEI and NU was conducted pursuant to Conn. Gen. Stat. §16-47. Final Decision, 6. The Department did not subject CL&P "to the type of review that a §16-19 rate proceeding provides." Final Decision, 72. Thus, in this non-rate case and at a time when CL&P is significantly overearning, the Department improperly fixed CL&P's distribution rates through 2003 and predetermined the amount of overearnings that it would be permitted to retain without any consideration of or regard for whether CL&P's ROE exceeds a reasonable rate of return or whether its distribution rates are currently, or will in the next three years be, at levels that are just and reasonable.

The Department's approval of the earning sharing mechanism is further arbitrary and capricious in that it directly contradicts the Department's own findings and conclusions in Docket No. 99-06-21, DPUC Investigation into Performance Based Regulation for Electric Distribution Companies,[3] February 2, 2000 ("Docket No. 99-06-21")("Attachment C"). In that docket, the Department concluded that such a plan should only be developed in concert with a general rate hearing or a complete operational or financial review. Id. at 10. Again, the earning sharing mechanism was adopted in a merger proceeding that did not involve or include a general rate hearing or financial review. See Final Decision, 72. Moreover, in Docket No. 99-06-21 the

3[3]The Department opened Docket No. 99-06-21 pursuant to Section 68 of Public Act 98-28, An Act Concerning Electric Restructuring, to investigate and report to the General Assembly its findings and recommendations with regard to performance based regulation ("PBR") plan design. Final Decision, Docket No. 99-06-21, 1. The Department's investigation specifically focused upon PBR as it applied to electric distribution companies, and the final decision in that matter constitutes the Department's most comprehensive analysis of PBR theory in general.

DPUC specifically stated that such a plan would not be appropriate for CL&P precisely because of the then proposed merger between CEI and NU. The Department recognized that such a merger "would further obscure CL&P's near-term cost structure." Docket No. 99-06-21, 9. Yet, less than one year after this decision, as part of its approval of the merger, the DPUC adopted the earning sharing mechanism for CL&P.

c. The 100 Basis Point Deadband in the Earnings Sharing Mechanism Violates Connecticut Law, is Arbitrary and Capricious and Beyond the DPUC's Legal Authority

The earning sharing mechanism is also in violation of Connecticut law, arbitrary and capricious and beyond the Department's statutory authority in that the DPUC cannot lawfully authorize CL&P to retain 100% of the earnings up to 11.3% ROE, or 100 basis point "deadband" above its currently allowed ROE of 10.3%. As the Department has recognized, Conn. Gen. Stat. §16-19(g) does not entitle or allow CL&P to retain the first 100 basis points above its allowed ROE. See Docket No. 92-10-09, DPUC Review of the Need for an Interim Rate Decrease for Connecticut Natural Gas Corporation, April 14, 1993 ("Docket No. 92-10-09") (Exhibit D). In that case, Connecticut Natural Gas ("CNG") proposed an overearnings cap mechanism similar to the Department's earning sharing mechanism and asserted that §16-19(g) permits it to retain the first 100 basis points above its allowed ROE. Docket No. 92-10-09, 10. The Department stated that that it had reviewed the legislative history and that:

> [n]owhere is it manifested that the legislature intended Conn. Gen. Stat. §16-19(g) to have the amendatory effect claimed by CNG. Moreover, the Department is not constrained by the 100 basis point bandwidth provided in this Section in reviewing a utility's rates on an interim basis. For example, under this Section the Department may conduct a special hearing on the need for an interim rate decrease if it finds that a public service company may be collecting rates which are more than just, reasonable and adequate. We believe it is conceivable that under certain circumstances, such as a sudden and steep decline in interest rates,

> the allowed ROE of [a] utility could prove to be unjust and unreasonable, and an interim reduction might be required. For these reasons, the Authority rejects CNG's earnings cap proposal.

Id., 10-11.

It is also arbitrary and capricious and beyond the DPUC's lawful authority in this merger proceeding conducted pursuant to Conn. Gen. Stat. §16-47 to effectively increase CL&P's allowed ROE to 11.3% and permit it to retain 50% of all earnings above that level. Again, CL&P's ROE of 10.3% was established in a rate case which concluded in early 1999. See Final Decision, 71. In this merger proceeding, the Department did not review CL&P's ROE pursuant to Conn. Gen. Stat. §16-19 and did not find that an ROE of 11.3% conformed with the principles of Conn. Gen. Stat. §16-19e.

2. The Department's Findings Do Not Support its Approval of This Merger

The Department's Final Decision includes legal error, is clearly erroneous and is arbitrary and capricious in that the Department approved the merger of CEI and NU despite CEI's managerial unsuitability to own and operate CL&P and Yankee. Pursuant to Conn. Gen. Stat. §16-47(d), in order to approve the merger the Department must, as threshold criteria, determine that CEI possesses managerial suitability and has the ability to provide safe, adequate and reliable service. The Department's Final Decision, however, makes clear that the CEI's management did not meet these threshold criteria. The Department specifically enumerated multiple examples of CEI corporate misconduct that the DPUC considered evidence of CEI's managerial unsuitability. For example, the Department "finds that there are serious shortcomings regarding CEI's view and approach toward environmental compliance,

management of its nuclear facilities and communications and response during emergency situations." Final Decision, 55. The Department then states that:

> [t]he 1989 Gramercy Park Steam Pipe Explosion, the 1998 PCB fire at Great Kills, the 1999 Washington Heights Blackout, and the 2000 IP2 Leak all raise concerns regarding CEI's ability to manage emergencies and be forthcoming with important information to the public and to environmental and regulatory officials. These concerns are heightened due to the public safety imperative regarding environmental compliance and the operation of nuclear generating facilities. When problems or emergencies occurred in these incidents, CEI's public information and reporting lacked timely details that should have been identified. Sequential updates continued to lack details. There appears to be a managerial problem in deciding what information to give out and who will provide it. CEI's post-incident action and communications are slow, and lack details needed by the public and officials. This results in the situation getting worse and customer dissatisfaction with CEI.

Id., 56 (Emphasis added).

The record is filled with examples of CEI's poor track record concerning environmental matters, emergency preparedness, emergency response and its demonstrated inability or unwillingness to keep the public and public officials adequately informed during such critical events. The record in this proceeding clearly shows that CEI has demonstrated a consistent pattern of causing environmental and public safety hazards and that CEI's management has consistently made concerted efforts to preserve its public image and insulate itself from liability for its actions by refusing to be forthcoming with regulators and the public about these incidents, even though they may directly implicate the public health and safety. See Final Decision, 49-56.

Based upon its review of CEI's management, the Department stated that it "believes that CEI has technological suitability to exercise control over NU. The Department however is particularly concerned that CEI's managerial style could result in problems in Connecticut and dissatisfaction among Connecticut ratepayers." Final Decision, 56. See also Final Decision, 55

("although CEI possesses technological suitability the Department is concerned about management style in response to certain situations.") To protect Connecticut ratepayers and the general public welfare the Department approved the merger subject to the following two conditions:

> 1. New CEI must continue to use CL&P's emergency reporting procedures in Connecticut to provide information to the public and government officials; and
>
> 2. CEI will make no budgetary reductions in Millstone operations, as reflected in the current business plans until the sale is completed or 1/1/04.

Final Decision, 56.

The Department's approval of the merger of CEI and NU is clearly erroneous, arbitrary and capricious and in legal error. The DPUC erred in failing to reject the merger because CEI failed to satisfy both of the threshold criteria required by Conn. Gen. Stat. §16-47(d). This is not a situation where the Department can protect the public interest, for example, by ordering CEI not to have any involuntary layoffs. Pursuant to Conn. Gen. Stat. § 16-47(d), the Department cannot remedy CEI's managerial unsuitability by imposing conditions upon its approval of this merger. CEI's managerial unsuitability and demonstrated inability to provide safe, efficient and reliable utility service are fatal to its application.

The Department's Decision is also clearly erroneous, arbitrary or capricious, characterized by an abuse of discretion or a clearly unwarranted exercise of discretion in view of the reliable probative and substantial evidence on the whole record. The DPUC found it necessary to impose 58 conditions in 18 different categories in order to approve the merger. This demonstrates that the Department recognized that the proposed merger presents serious problems to Connecticut and its consumers and could not be approved absent the 58 conditions. The

Department's approval of this merger is therefore wholly unsupported by the Department's own findings as well as the record in this proceeding. The record and the findings support only the conclusion that the only way to protect Connecticut and its consumers from this sort of conduct is to reject the merger.

B. The Appellant Will Suffer Irreparable Harm Should a Stay be Denied

If the court denies the appellant's motion for a stay and CEI is allowed to proceed with this merger, the appellant will suffer irreparable harm. A denial of the requested stay of the Department's Final Decision to approve the merger would allow CEI and NU to consummate the merger as soon as they receive all of the required regulatory approvals, which is expected to be in the near future. Once that happens, NU will cease to exist as a separate corporate entity. NU shareholders will have exchanged their shares for approximately $3.8 billion in cash and stock in the new corporation.

As the United States Supreme Court has recognized, "where businesses have been merged or purchased and closed out it is commonly impossible to turn back the clock. . . . Administrative experience shows that the Commission's inability to unscramble merged assets frequently prevents entry of an effective order of divestiture." Federal Trade Commission v. Dean Foods Co., 384 U.S. 597, 607 n.5, 738, 16 L.Ed. 2d 802 (1966) (citations omitted). Given that appellant is likely to succeed on the merits of his appeal, the consummation of this merger would render it impossible to return to the status quo ante and thereby irreparably harm appellant. Moreover, undoing this merger, or ordering CEI to divest itself of the Connecticut public service companies, if possible, would require extraordinary costs and efforts that likely will be borne, at least in part, by the ratepayers in Connecticut.

The appeal of the Department's decision to approve the merger of CEI and NU is a unique situation similar to that of an appeal from an order of the Freedom of Information Commission to disclose a document. In either case, the appellant would be irreparably harmed if a stay is not issued. See McCarthy v. Freedom of Information Commission, 35 Conn. Sup. 186, 190, 402 A.2d 1197 (1979). In McCarthy, the court stated that:

> [t]his singular nature of an appeal from a freedom of information grant requires the issuance of a stay in order to preserve the plaintiff's statutory right of appeal under §1-21i(d). Should a stay be denied here, the irretrievable nature of the information ordered released would preclude the court from performing its judicial duty to provide a meaningful remedy, upon proof of entitlement by the plaintiffs, thereby rendering their appeal moot and overturning the court's jurisdiction to review the commission's order, the fundamental reason for this appeal.

Id. at 190.

In the present case, the appellant's claims challenge fundamental underpinnings of the Department's decision to approve the merger. Since it is impossible to return to the status quo ante should the merger be consummated, and since it may not be practical to undo the merger once consummated, appellant will be irreparably harmed by the denial of a stay. Such a denial would act to preclude the court from performing its judicial duty to provide a meaningful remedy to certain of appellant's claims, thereby rendering those portions of this appeal moot and effectively eliminating this court's jurisdiction to review the DPUC's decision to approve the merger.

Moreover, CEI's history of mismanagement and corporate misconduct presents immediate and grave threats to Connecticut and its citizens. As noted above, the Department's own final decision "finds that there are serious shortcomings regarding CEI's view and approach toward environmental compliance, management of its nuclear facilities and communications and

response during emergency situations." Final Decision, 55. While the court will still retain its authority in law and equity to undo the merger, the difficulties in affording the practical relief sought by the Attorney General strongly militate in favor of a stay.

C. A Stay Will Not Unfairly Prejudice the Appellees

A stay of the Department's decision will not operate unfairly to prejudice any of the parties in this matter. Neither CEI nor NU has claimed that this merger must be consummated by any particular date in order to maintain or ensure their corporate viability. In fact, the application for approval of the proposed merger of CEI and NU was filed with the DPUC in January of 2000, and the companies have made no showing that further delay to allow the court to fully address the issues presented on appeal would cause significant harm to the companies.

D. The Public Interest is Best Served by Maintaining the Status Quo Pending the Outcome of This Appeal

The public interest is best served by maintaining the status quo pending the resolution of the matters raised in this appeal. This is because the public interest is precisely the interest represented by the appellant in this appeal. The appellant in this case represents the interests of the State of Connecticut and the interests of the people of the State of Connecticut. Connecticut Commission of Special Revenue v. Connecticut Freedom of Information Commission, 174 Conn. 308, 319, 387 A.2d 533 (1978). The interests of the State of Connecticut and the people of the State of Connecticut are best served by ensuring that any entity seeking to acquire NU satisfy all of the criteria of Conn. Gen. Stat. §16-47(d), including demonstrating managerial suitability, prior to the time that the merger is consummated. As noted above, the consummation of this merger before this issue is resolved by this court could limit or eliminate the court's ability to provide a meaningful remedy to appellant's claims. The interests of the State of

Connecticut and the people of the State are also best served by ensuring CL&P's ratepayers receive all of the rate protections provided by Connecticut law.

IV. CONCLUSION

For all the forgoing reasons, the appellant respectfully requests that the court stay the Department's Final Decision that is the subject of this appeal in order to maintain the status quo pending the final outcome of this appeal. For the reasons articulated above, a balancing of the equities demonstrates that the requested stay is in order. The appellant is likely to prevail in his appeal of this decision and will suffer irreparable harm if a stay is not imposed. Moreover, other parties to this case will not be unduly harmed and a stay will protect, not impair, the public interest.

WHEREFORE, the appellant requests that the court stay the Decision of the Department, as represented by Exhibits A and B, pending final disposition of this appeal. A proposed order accompanies this application.

Respectfully Submitted,

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CERTIFICATION

I hereby certify that a copy of the foregoing **Memorandum of Law in Support of the Appellant's Motion for Stay** was mailed, postage prepaid, to the following parties of record, on this 13th day of February, 2001:

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